1988

State of Utah v. Charles Langdon : Brief of Respondent

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
	:	
Plaintiff-Respondent.	:	Case No. 880370-CA
	:	
vs.	:	
	:	
CHARLES LANGDON,	:	Priority 2
	:	
Defendant-Appellant.	:	

BRIEF OF RESPONDENT

APPEAL FROM THE JUDGMENT, SENTENCE AND COMMITMENT OF THE FIFTH DISTRICT COURT OF IRON COUNTY, STATE OF UTAH, CONVICTING DEFENDANT-APPELLANT OF POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE, A SECOND DEGREE FELONY, THE HONORABLE J. PHILIP EVES, PRESIDING.

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BRIEF OF RESPONDENT

JURISDICTION AND NATURE OF PROCEEDINGS

Defendant pled no contest to a charge of Unlawful Possession of a Controlled Substance with Intent to Distribute, a second degree felony. This Court has jurisdiction pursuant to Utah Code Ann. § 78-2a-3 (1987) because the charge is a second degree felony.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether defendant is precluded from appealing the denial of his motion to suppress when he subsequently entered an unconditional plea of no contest to the charge.

2. Whether defendant has standing to challenge the search of the box attached to the car which he was driving and the seizure of the cocaine found in the box.

3. Whether the troopers had probable cause to search the box attached to the car thus making the search lawful.

4. Whether the troopers' detention of defendant was for a reasonable length of time.

5. Whether the troopers' reliance on a judge's oral authorization to search the box was a good faith reliance under U.S. v. Leon.

STATUTORY PROVISIONS

For purposes of this brief, respondent relies on the following statutory provision:

Utah Code Ann. § 77-23-4 (1982).

The text of this provision is attached in the Addendum.

STATEMENT OF THE CASE

Defendant was charged with one count of Unlawful Possession of a Controlled Substance with Intent to Distribute, a second degree felony, in violation of Utah Code Ann. § 58-37-8(1)(iv) (Supp. 1988), alleged to have occurred on March 17, 1988.

Defendant filed a motion to suppress evidence on April 6, 1988, with the Fifth Judicial District Court for Iron County. The Honorable J. Philip Eves heard evidence and argument on the matter on May 2, 1988, and May 17, 1988. Based on the evidence and Memoranda of Law submitted by plaintiff and defendant, Judge Eves denied the motion in an order signed May 31, 1988. A copy of the Order had been sent to counsel on May 23, 1988. (A copy of this Order is included in the Addendum.)

Trial in the matter had been set for June 3, 1988. On June 1, 1988, defendant moved to continue trial pending an interlocutory appeal but the trial court denied the motion. Defendant discussed the matter with his counsel and changed his

plea to one of no contest. Defendant signed a Statement of Defendant Regarding Plea Bargain on that date. (Copies of the Minute Entry and Defendant's Statement are included in the Addendum.)

On June 1, 1988, defendant was sentenced to a term of one to fifteen years in the Utah State Prison and no fine.

STATEMENT OF THE FACTS

On March 17, 1988, at approximately 6:30 p.m., three Utah Highway Patrolmen were travelling northbound on I-15 near Cedar City, Utah (R. 180 at 4, R. 181 at 14 and 30). The trooper who was driving noticed two cars behind him which appeared to be speeding. He pulled over and turned on his rear radar to check their speed (R. 180 at 4). The second car, driven by defendant, was clocked at 70 miles per hour and the troopers pulled it over for speeding (R. 180 at 5).

Trooper Lee approached defendant, who was the sole occupant of the 1978 Cadillac, and asked for his driver's license and registration (R. 180 at 5). The registration did not list defendant's name as owner of the car but instead gave the names of Marvin (last name not in record) and Anthony Linear (R. 180 at 5, R. 181 at 17 and 31). The trooper became suspicious when the car was registered to others and began to investigate (R. 180 at 5, R. 181 at 17).

Defendant told the troopers that the car belonged to his stepson (T. 180 at 6). Defendant then told them that he was buying the car but that it was registered to his stepsons for insurance purposes (T. 181 at 18-19 and 29). Defendant said he

had been buying the car for one-and-a-half years but had been in possession of it this time for only a day or two (T. 181 at 19). Defendant gave troopers a phone number in California to verify permission for him to have the car but, when dispatch called, there was no answer (R. 180 at 6, R. 181 at 21).

Defendant gave the officers a second number to call to contact a woman named Fannie. Dispatch called that number and a woman named Sherry, who did not know defendant but knew Anthony, answered. She refused to give a phone number for Anthony but offered to give him a message (R. 180 at 6, R. 181 at 21).

About 7:15 p.m. a man claiming to be Anthony Linnear telephoned and said defendant had permission to use the car. The person calling was not able to say where defendant was travelling but did say defendant had permission to drive the car (T. 180 at 6, T. 181 at 22 and 31).

During the time spent checking on the ownership of the car, Trooper Lee asked defendant if he could look through the car. Trooper Lee asked defendant if he had any weapons or contraband and defendant said no (T. 180 at 6, R. 181 at 14). Defendant's response when asked if the Trooper could look in the car was, "I don't care. Go ahead" (R. 181 at 14). Defendant even took the car keys out of the ignition and went to the back of the car and opened the trunk. Defendant then went and sat in the patrol car with Trooper Bagley to keep warm (R. 180 at 7, R. 181 at 14-15).

In searching the car. Trooper Lee found a road atlas, sleeping gear in the back seat, two small pieces of luggage in

the trunk and ammunition for a .308 automatic pistol (R. 181 at 26). He also found air freshners, two in the trunk and one in the passenger compartment (R. 181 at 26). These air freshners were not typical hanging car freshners but were for household use. One was a stick-on type for fixing to a wall and one a liquid in a bottle (R. 181 at 35-36).

At about 7:00 p.m., before the purported owner of the car was located, Trooper Lee looked under the rear of the car and saw a black box (R. 180 at 8, R. 181 at 33). The box was three to five inches by three to five inches by twelve inches and was welded to the underneath of the car between the gas tank and the rear bumper (R. 180 at 8-9, R. 181 at 15 and 23). The box had a new padlock on it and was free of road dirt and grime and appeared to be newly installed (R. 180 at 8 R. 181 at 15). The trooper could see that there was something in the box but not what it was (R. 181 at 20-21). When he found the box, the Trooper asked defendant if he could open the box. Defendant responded that he knew nothing about the box, that he did not want to give permission, and that he did not have a key for the padlock (R. 180 at 7, R. 181 at 19-20 and 38). The officers asked for defendant's key ring to see if any keys fit and defendant voluntarily handed them over. One key fit the padlock on the box but would not turn and open the lock (R. 181 at 20). Later, after the lock was opened by other means, the troopers found a key in the bottom of the car's glove box which fit the padlock (R. 181 at 48). Because defendant disclaimed any knowledge of or ownership in the box, the troopers had the

dispatcher ask the purported owner when he telephoned if they could open the box. The person claiming to be Anthony Linnear said he didn't know that a black box as welded to the bottom of the car, he didn't know anything about it and would not give permission to open the box (R. 181 at 22).

The troopers at that point felt that they had probable cause to seek a warrant to open the black box. This was based on the following facts:

1. The black box apparently newly welded to the underside of the car (R. 181 at 23).

2. Something was in the box but officers could not see what (R. 181 at 20-21).

3. Experience with hidden compartments in cars used to transport contraband (R. 181 at 24).

4. The new lock on the box and the road atlas and paucity of personal items in the car (R. 181 at 24).

5. The newly painted condition of the car and the new, expensive tires on the car (R. 181 at 25).

6. Sleep gear and fast food wrappers in the back of the car (R. 181 at 25-26).

7. Air freshners in the car which are often used to mask the smell of marijuana and the ether used in manufacturing cocaine (R. 181 at 26).

8. The driver not owning the car and the ammunition found in the car (R. 181 at 27).

The troopers then spent some time trying to find a member of the Iron County Attorney's Office and a judge to try to

get a search warrant (R. 187 at 41-45). In an attempt to comply with Utah Code Ann. § 77-23-4 (1982), Trooper Bagley was placed under oath and testified to the occurrences of the evening to Judge Margaret Miller, the Cedar City Precinct Justice of the Peace. Judge Miller verbally granted authorization to search the box but evidently a search warrant was never actually written or signed (R. 180 at 10, R. 181 at 12). The search for the car's owner and for a judge to issue a warrant took approximately two hours and ten minutes (R. 181 at 39). The information used to seek the warrant was transcribed and introduced at the suppression hearing (R. 180, R. 181 at 51).

Based on the probable cause adduced, the troopers picked the lock on the box and found seven ounces of 90% pure cocaine (R. 181 at 47 and 42).

SUMMARY OF ARGUMENTS

Defendant has entered an unconditional plea of no contest in this case and is thus precluded from raising the suppression matter on appeal.

Because defendant's claim of ownership in the car is nebulous and because of his disclaimer of ownership in the box welded to the car, he does not have standing to challenge the search of the box.

All of the factors enumerated by the officers, added to their experience and training, gave them probable cause to believe that the box contained contraband and made their search valid.

Under the circumstances the troopers detention of defendant was reasonable. A rigid time limit for detention has been rejected by the courts and this Court must look at the reasons for the detention to determine reasonableness.

The trial court held that there was not a valid search warrant in this matter. In spite of that, respondent contends that the troopers relied, in good faith, on the verbal authorization as a neutral magistrate to conduct the search of the box.

ARGUMENT

POINT I

DEFENDANT CANNOT APPEAL THE DENIAL OF HIS MOTION TO SUPPRESS AFTER HE HAS ENTERED AN UNCONDITIONAL PLEA OF NO CONTEST TO THE CHARGE.

Defendant moved to suppress the cocaine found in the black box which was attached to the underside of the car which he was driving. When his motion was denied, defendant appeared before the trial court two days before the trial and asked for a continuance to file an interlocutory appeal. After a brief recess, defendant returned and entered a no contest plea to the original charge (R. 169-170). (See Addendum for Minute Entry about the plea.) Defendant also initialed and signed a Statement by defendant Regarding Plea Bargain and his counsel and the Deputy Iron County Attorney signed certificates indicating the accuracy of the defendant's statement (R. 146-152) (See Addendum for the full text of this Statement). Paragraph 5 of the statement indicates that defendant knew that he had the Constitutional right to appeal his conviction if he were to be

tried and convicted by a jury or by the court. Nothing in the record gives any indication that the No Contest plea entered by defendant on May 1, 1988 was a conditional plea. The court's minute entry and the defendant's statement make no mention of a conditional plea. From the record it is apparent that defendant's plea was entered unconditionally.

This Court recently addressed the issue of conditional versus unconditional pleas in the case of State v. Sery, 758 P.2d 935 (Utah Ct. App. 1988). The Court reiterated the common law rule that a voluntary guilty plea waives a defendant's right to appeal an adverse suppression ruling. Id. at 938. The Court then said:

> In Utah, this general rule regarding forfeiture of appellate review of an adverse ruling on a pre-plea motion to suppress applies with equal force to a defendant who enters an unconditional no contest plea, which "if accepted by the court shall have the same effect as a plea of guilty...." Utah Code Ann. § 77-13-2(3) (1982). Accord Cookery v. State, 524 P.2d 1252 (Alaska 1974); Jackson v. State, 294 So.2d 114 (Fla. App. 1974); People v. New, supra.

Id at 938. In the Sery case this Court reversed and remanded because it found that Sery had entered his plea conditioned on the right to appeal the pre-plea suppression. The agreement in that case between defendant and the prosecution and approved by the judge allowed the appeal and a withdrawal of defendant's plea if the appellate court reversed the trial court's suppression ruling.

In the present case, there was no such agreement in the record. All of the information in the record points to an

unconditional plea on defendant's part. He is thus precluded from appealing the suppression ruling.

POINT II

DEFENDANT DOES NOT HAVE STANDING TO CHALLENGE THE SEARCH OF THE BOX AND THE SEIZURE OF THE COCAINE.

The car which defendant was driving was registered to other people but defendant claimed he was buying it. Someone who claimed to be the owner of the car told the troopers that defendant had permission to drive the car. Defendant gave permission to search the car but no evidence requiring suppression was seized from the interior of the car or trunk. However, when Trooper Lee knelt and looked under the car (a place he lawfully had the right to be), he saw, in plain view, a rectangular box newly welded to the car's underside. When asked, defendant disclaimed any knowledge of the box. The purported owner of the car also disclaimed any knowledge of the box.

The issue of standing was just briefly mentioned at the suppression hearing. The Deputy Iron County Attorney said the State was not prepared to concede that defendant had standing (R. 181 at 10-11) and briefly argued the issue of standing at the close of evidence (R. 181 at 58-59). Defense counsel also briefly argued the matter (R. 181 at 60) but neither counsel cited any authority for their positions. The trial court made a cursory ruling that defendant had standing because he was the driver (R. 181 at 63) but focused his questions on the good faith exception of United States v. Leon, 468 U.S. 897 (1983) and the automobile exception to search warrants under Chambers v.

Maroney, 399 U.S. 42 (1969). The State maintains that the trial court, admittedly on the basis of no case-law assistance from counsel, erroneously found that defendant had standing.

Respondent contends that an individual has standing to object to the lawfulness of a search only if he has a "legitimate expectation of privacy" in the item or premises searched. Rakas v. Illinois, 439 U.S. 128 (1978). "A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed." Rakas, 439 U.S. at 134, citing Anderman v. United States, 394 U.S. 165, 174 (1969). The fact that the defendant may have been "legitimately on [the] premises" in that he may have been in the car with the owner's permission does not determine whether he had a legitimate expectation of privacy in the particular areas of the automobile searched. Rakas, 439 U.S. at 148. Further, "the proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure." Rakas 439 U.S. 131 n. 1.

The present case is similar to the recent case of State v. DeAlo, 748 P.2d 194 (Utah Ct. App. 1987). In that case, a California man was driving a car registered to another man in New York. The driver gave consent to search the car and the officer found a secret compartment in the trunk which held cocaine. The defendant in that case denied knowledge of the compartment and its contents and presented no evidence at the suppression hearing of his permission to have the car.

This Court addressed the issue of that defendant's standing and ruled that he had no legitimate expectation of privacy in the area searched. Id. at 196-197. This Court quoted State v. Valdez, 689 P.2d 1334 (Utah 1984) as saying: "[d]efendant concede[d] that he did not own the car or the attache case [found in the trunk] containing the evidence complained of, and [therefore] failed to show that he had any legitimate expectation of privacy in the effects searched." Id. at 196. In DeAlo, as in the present case,

> defendant denied any ownership in the car and any knowledge of the secret compartment or its illegal contents. The only substantive evidence defendants presented at the suppression hearing was the testimony of the arresting officer that it was his understanding Rafael Villa was using the car with his brother's permission. No other witnesses were called and no other evidence was presented. It might be argued the officer's testimony established some expectation of privacy on the part of Villa. That certainly does not establish an expectation of privacy on the part of defendant.

Id. at 196. This Court held that the defendant may have had an expectation of privacy in his own personal belongings in the car but not in the car itself. The defendant had not shown "a legitimate expectation of privacy in the area where the cocaine was found. Therefore, he had no standing to object to the search...." Id. at 197.

Since in the present case defendant denied any knowledge of the black box welded to the underside of the car and did not produce any evidence at the suppression hearing of an ownership interest in the car, he has not demonstrated that he

had standing to challenge the seizure of the cocaine. A disclaimer is treated as an abandonment of the property. See United States v. Kendall, 655 F.2d 199 (9th Cir. 1981), cert. denied, 455 U.S. 941, 102 S.Ct. 1434, 71 L.Ed.2d 652 (1982); United States v. Miller, 589 F.2d 1117 (1st Cir. 1978), cert. denied, 440 U.S. 958, 99 S.Ct. 1499, 59 L.Ed.2d 771 (1979); United States v. Colbert, 474 F.2d 174 (5th Cir. 1973). Abandoned property loses its privacy expectation. State v. Austin, 584 P.2d 853 (Utah 1978).

POINT III

THE TROOPERS HAD PROBABLE CAUSE TO BELIEVE THAT THE BOX CONTAINED CONTRABAND AND THEIR SEARCH WAS LAWFUL.

Defendant gave the troopers permission to search the car that he was driving but tried to withdraw consent when the troopers found the black box welded to the underside of the car. Defendant now claims that the troopers had no right to search the box.

The law is quite settled that automobiles do not have the same protection from search that houses do. See Carroll v. United States, 267 U.S. 132 (1925). This is based on the mobility of the car, the fact that the people in possession of the car are alerted to the officers' interest, and the fact that the contents of the car may never be found if time is expended in getting a warrant. See Chambers v. Maroney, 399 U.S. 42 (1970) and State v. Limb, 581 P.2d 142 (Utah 1978). If an officer has probable cause to believe that an automobile contains contraband the automobile may be searched without a warrant. Carroll v.

United States, 267 U.S. 132 (1925). In addition, if the officers have probable cause to search the car the probable cause extends to a search at the station house when the car is taken there. See Chambers v. Maroney, 399 U.S. 42 (1969), and Texas v. White, 423 U.S. 67 (1975). In the White case consent to search was denied but officers searched anyway and the Court ruled that they had probable cause to do so. The Court held that the officers had probable cause to search at the stop and the probable cause still existed at the station house. Id. at 68.

The troopers in the present case had probable cause to search the black box. The initial stop for speeding was valid and the defendant's consent to search the car was freely given. In the car, the troopers found a road atlas, sleeping gear, very little personal luggage (inconsistent with a trip across the country to a new job), three air freshners of the household- not car-type, and ammunition for automatic pistol but no gun. The car was not registered to defendant and defendant gave conflicting stories about what, if any, ownership interest he had.

As part of his search the trooper knelt and looked under the car and found a rectangular black box newly welded to the underside and newly painted with a new padlock on it. He could see something in the box but not what it was. He asked defendant and the purported owner of the car about the box and both disclaimed any knowledge of it but refused to give consent to open it.

The trooper's experience and training had taught him that drug smugglers often carried contraband in older cars which were well cared for and had new tires. Smugglers also often hid the drugs in secret compartments and used household air freshner to try to mask the odor of the contraband. They travelled with little luggage and with sleeping gear and ate at fast food restaurants in order not to stay in one place too long. The presence of ammunition suggested the presence of a gun which may have been hidden in the car.

The factors establishing probable cause to search in this case are:

1. The troopers' experience and training in detecting drug smugglers.

2. A few personal belongings in the car.

3. The questions surrounding registration and ownership of the car.

4. The ammunition in the car.

5. The air freshners in the car.

6. The new black box concealed under the car and its new padlock.

7. The disclaimer of knowledge of the box by defendant and the car's purported owner and their refusal to allow a search of the box.,

8. The fact of something being in the box.

These factors add up to probable cause to believe that the black box contained contraband and validated a warrantless search of the box. No other legitimate explanation for the presence of all these factors exists.

POINT IV

DEFENDANT'S DETENTION BY THE TROOPERS WAS FOR A REASONABLE PERIOD OF TIME UNDER THE CIRCUMSTANCES.

Defendant maintains that his detention for more than two hours before arrest was unreasonable. In United States v. Place, 462 U.S. 696 (1982), the United States Supreme Court declined "to adopt any outside time limitation for a permissible Terry stop...." Id. at 709. In a footnote the Court said, "Such a limit would undermine the equally important need to allow authorities to graduate their responses to the demands of any particular situation." Id. at 709, f.n. 10 .

In the present case the troopers issued a citation for speeding and then were seeking to verify whether defendant had legal use of the car. During this attempt to verify, which took 30-45 minutes, they developed probable cause to believe that there was contraband in the box attached to the car. Although the officers at that point could have searched the box and arrested defendant, they chose to seek a search warrant. Their efforts to find a prosecutor and a judge were pursued with all due diligence. Evidently, most of the judges were out of the county and finding Judge Miller took some time (R. 181 at 44-45). The troopers were not dilatory in trying to obtain a warrant, nor did they use the time to continue searching the car or to "shake down" the defendant. The length of time used was reasonable in light of what the troopers found, defendant's refusal to consent to searching the box, and the attempts to find a prosecutor and a judge to try to obtain a warrant.

POINT V

THE TROOPERS RELIED ON THE AUTHORIZATION OF A MAGISTRATE TO CONDUCT THEIR SEARCH AND THUS THEIR CONDUCT ARGUABLY FALLS WITHIN THE GOOD FAITH EXCEPTION OF LEON.

Even though the troopers in this case had probable cause to search the black box without a warrant, they did seek to obtain one. The troopers sought out a prosecutor and a judge in order to attempt to obtain a warrant. Trooper Bagley gave information to Judge Margaret Miller orally, with the assistance of a Deputy Iron County Attorney, to support issuance of a warrant. This oral affidavit was transcribed and included in the record (R. 180). After hearing the oral affidavit of the trooper, Judge Miller gave verbal authorization for the troopers to "continue with the search" (R. 180 at 10). The validity of the authorization was challenged by defendant at the suppression hearing (T. 181 at 3-4). It became clear at that time that no written memorialization of the verbal authorization was ever made (T. 181 at 5). Counsel argued whether a search warrant had to be a written order or if a verbal order was sufficient (T. 181 at 5-10). The trial court held that there was no search warrant in this case (R. 181 at 12 and 62). The trial court asked for memoranda on the application of the "good faith exception" found in United States v. Leon, 468 U.S. 897 (1983). After reviewing the memoranda the court found that the troopers had probable cause to search the black box so it did not address the Leon issue (R. 181 at 041-046, See Addendum for a copy of that decision).

Even though the trial court did not rule in respondent's favor on the Leon issue but instead found that the officers had probable cause for a warrantless search, defendant has brought the matter up on appeal. Respondent maintains that, arguably, the Leon doctrine could apply in this case.

This case is distinguishable from State v. Mendoza, 748 P.2d 181 (Utah 1987). In the Mendoza case the officers made a Terry stop without reasonable suspicion according to the Utah Supreme Court. The officers never tried to get a search warrant but merely placed Mendoza under arrest then searched the car incident to that arrest. Since there was no reasonable suspicion to stop the car under Terry, the actions of the officer in the subsequent search were per se unreasonable. The Court did discuss the Leon rationale saying:

> In United States v. Leon, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), however, the Court created an exception to blanket application of the exclusionary rule. The Court held that the rule does not apply where the state establishes that an officer exhibited "objectively reasonable" reliance on a magistrate's probable cause determination and on the technical sufficiency of the search warrant issued. Id. at 922-23, 104 S.Ct. at 3420-21.

748 P.2d at 185. They held that the Leon exception could not be used in the Mendoza case saying:

> [N]o outside authority on which the officers could reasonably rely expressly authorized the search of the vehicle; therefore, the policy foundations of the Leon exception do not appear in searches of the kind involved in this case.

Id. at 185 (footnote omitted).

In the present case the argument can be made that the troopers did seek an "outside authority" who expressly authorized the search of the box. The question arises as to whether their reliance was "objectively reasonable" but no finding on that issue was made by the trial court below. Since the trial court held that the search was warrantless but valid because based on probable cause, the issue of good faith under Leon is not paramount in this appeal.

CONCLUSION

Based on the foregoing and matters addressed at oral arguments, respondent requests that defendant's no contest plea be affirmed.

DATED this 21st day of October, 1988.

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Charlene Barlow

CHARLENE BARLOW
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MAILING CERTIFICATE

I hereby certify that on the 21st day of October, 1988, I caused to be mailed, postage prepaid, four (4) true and exact copies of the above and foregoing Brief of Respondent to James L. Shumate, 110 North Main, Suite H, P.O. Box 623, Cedar City, Utah 84720.

Charlene Barlow

ADDENDUM

77-23-4. Examination of complainant and witnesses — Witness not in physical presence of magistrate — Duplicate original warrants — Return. (1) All evidence to be considered by a magistrate in the issuance of a search warrant shall be given on oath and either reduced to writing or recorded verbatim. Transcription of the recorded testimony need not precede the issuance of the warrant. Any person having standing to contest the search may request and shall be provided with a transcription of the recorded testimony in support of the application for the warrant.

(2) When the circumstances make it reasonable to do so in the absence of an affidavit, a search warrant may be issued upon sworn oral testimony of a person who is not in the physical presence of the magistrate provided the magistrate is satisfied that probable cause exists for the issuance of the warrant. The sworn oral testimony may be communicated to the magistrate by telephone or other appropriate means and shall be recorded and transcribed. After transcription, the statement shall be certified by the magistrate and filed with the court. This statement shall be deemed to be an affidavit for purposes of this section.

(a) The grounds for issuance and contents of the warrant issued pursuant to subsection (2) shall be those required by this chapter. Prior to issuance of the warrant, the magistrate shall require the law enforcement officer or the prosecuting attorney who is requesting the warrant to read to him verbatim the contents of the warrant. The magistrate may direct that specific modifications be made in the warrant. Upon approval, the magistrate shall direct the law enforcement officer or the prosecuting attorney for the government who is requesting the warrant to sign the magistrate's name on the warrant. This warrant shall be called a duplicate original warrant and shall be deemed a warrant for purposes of this chapter. In such cases the magistrate shall cause to be made an original warrant. The magistrate shall enter the exact time of issuance of the duplicate original warrant on the face of the original warrant.

(b) Return of a duplicate original warrant and the original warrant shall be in conformity with this chapter. Upon return, the magistrate shall require the person who gave the sworn oral testimony establishing the grounds for issuance of the warrant to sign a copy of the transcript.

(3) If probable cause is shown, the magistrate shall issue a search warrant.

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IN THE FIFTH JUDICIAL DISTRICT COURT, IN AND FOR IRON COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff,	)	**MEMORANDUM DECISION AND ORDER DENYING MOTION TO SUPPRESS**
vs.	)	
CHARLES LANGDON, Defendant.	)	District Court No. 1187

This matter came on before the Court for decision on the 17th day of May, 1988, on the Defendant's Motion to Suppress. The Court received and reviewed the briefs filed by the parties and considered the proofs and arguments offered.

The Court finds the facts to be as follows:

Three Utah Highway Patrol troopers were en route from St. George to Cedar City on March 17, 1988, at about 1830 hours (6:30 p.m.). The driving trooper noted two cars approaching from behind travelling extremely fast. The cars appeared to the troopers to be travelling together. As the troopers approached the middle interchange in Cedar City, they pulled off to the side of the interstate and clocked the two vehicles by use of their radar equipment. The Defendant's vehicle was the second of the two cars and was travelling a little faster than the first. It

was clocked at 71 miles per hour in a 65 miles per hour zone. The troopers stopped the car.

The Defendant produced his identification and the vehicle's registration. The car was not registered to the Defendant/driver. The trooper became suspicious that the car might have been stolen because it was not registered to the Defendant/driver and contained very little personal effects in the car, a road atlas, and bedding.

The trooper asked about ownership of the vehicle and a telephone number to call to verify ownership or lawful possession of the vehicle. While the dispatcher attempted to call the purported owner in California, Trooper Lee inquired of the Defendant/driver to search the car for weapons or contraband. The Defendant freely consented. His reply was, "I don't care. Go ahead." He exited the vehicle, took out the keys from the ignition, and went directly to the trunk. Without the trooper saying anything, the Defendant/driver opened the trunk.

Welded to the frame of the car below the trunk and between the rear bumper and the gas tank, in plain view from underneath the car, was a black box measuring 3" x 3" x 12". The box was locked by a new silver padlock. There were no signs of dirt, grime, or road debris on the box or the lock. They appeared to be new and recently affixed to the vehicle.

While the dispatcher was attempting to contact the purported owner of the car, Defendant had told the troopers that he had had the car for about a year but did not know the locked box was

there, nor did he have a key to the lock. None of the keys on rings in Defendant's possession fit the lock (although the key was later found in the car's jockey-box). Through a small crack in the door of the box, it could be seen that something was inside.

The dispatcher was called by telephone by someone purporting to be the registered owner who said that Defendant did have permission to have the car, but that he (the purported caller) did not know of the existence of the subject box either and, therefore, could not consent to its search.

The dispatcher had then attempted to contact Judge Miller, who was the only magistrate known to be in the area, the others having been out-of-state. It was Judge Miller's husband's birthday and the dispatcher had to take some time to locate her. Later she arrived at the Utah Highway Patrol offices and a search warrant was verbally authorized by her at 2040 hours (8:40 p.m.), although a written warrant was never issued. Thereafter the vehicle was moved off of the dark interstate to the lighted "sally-port" at the Correctional Facility. A more thorough search ensued and the box was opened. It was found to contain cocaine.

The troopers reasonably believed that the vehicle contained contraband, which belief was supported by these articulated facts known to the troopers at the time of the search:

1. The car was not registered to Defendant;

2. The vehicle contained a little luggage, but there was an absence of personal property and clothing inconsistent with Defendant's going from California to Chicago to look for work, as he had said he was doing;

3. A road atlas was open on the front seat and several cities, including Chicago, were marked, as were certain areas near Barstow, California, and between St. George, Utah, and Richfield, Utah; those are areas of high enforcement by the highway patrol;

4. The Defendant first said that the car belonged to his relatives, and later he said he was purchasing the car from them and had had its possession for one and one-half (1 1/2) years;

5. There was a 3" x 3" x 12" box welded to the rear portion of the frame with a brand new silver padlock showing no signs of road dirt, grease, or other indicia of having been there but a very short time;

6. Both the Defendant-driver and the purported registered owner denied knowledge of the existence of the box;

7. The car was an older model, yet in exceptionally good physical and mechanical shape, generally fitting a pattern of other vehicles known to the troopers to be used for interstate transportation of drugs;

8. There were open household type "stick-up" room deodorizers in the trunk and tool kit; and

9. Through a small opening in the door of the box, it could be seen that something was inside the box.

Therefore, the Court concludes that the troopers had probable cause to conduct a search.

Inasmuch as the vehicle's driver was alerted to the troopers' suspicions, the vehicle was stopped on the highway, the vehicle was easily moveable, and the vehicle or its contents might never have been found again, the Court concludes that the troopers' search falls within the "vehicle exception" to the warrant requirements.

Having so concluded that the troopers had probable cause to search and that the search was within the "vehicle exception" to the warrant requirement, the Court need not address the issues relating to the Leon exception.

Therefore, Defendant's Motion to Suppress is hereby denied.

DATED this 31st day of May, 1988.

J. Philip Eves

J. PHILIP EVES
District Court Judge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed a true and correct copy of the foregoing MEMORANDUM DECISION AND ORDER DENYING MOTION TO SUPPRESS to Mr. James L. Shumate, Attorney for Defendant, at P.O. Box 623, Cedar City, UT 84720, by first-class mail, postage fully prepaid, on this 23rd day of May, 1988.

Michelle Cleveland
Secretary

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF IRON, STATE OF UTAH

CRIMINAL DIVISION

MINUTE ENTRY – ARRAIGNMENT

CRIMINAL NO: 1187 JUDGE: J. PHILIP EVES

PLAINTIFF: STATE OF UTAH REPORTER: PAUL McMULLIN

COUNSEL: Scott M. Burns CLERK: DAVID I. YARDLEY

DEFENDANT: CHARLES LANGDON BAILIFF: DON MURDOCK

COUNSEL: James L. Shumate

WITHOUT COUNSEL ☐ RECALL: ☐ ☐

INFORMATION CHARGE Possession with intent to distribute, a second degree felony ,A

AMENDED INFORMATION ,A

☐ ADVISED OF CHARGE AND PENALTY THEREFOR

☐ INFORMATION READ ☒ READING OF INFORMATION WAIVED

☐ TIME FOR PLEADING WAIVED ☐ TIME FOR PLEADING REQUESTED

☐ ADVISED OF RIGHTS ☒ ADVISED OF CHARGE, PENALTY AND RIGHTS

☒ RECORD MADE OF PLEA BARGAINING allowed to plead "no contest".

☐ NO PLEA BARGAINING

DEFENDANT BEING FULLY ADVISED, FREELY AND VOLUNTARILY ENTERED PLEA:

☐ GUILTY ☐ NOT GUILTY X no contest ☒ PLEA ORDERED ENTERED

☐ TO BE SET FOR JURY TRIAL ☐ TO BE SET FOR NON-JURY TRIAL

☐ TIME FOR SENTENCING WAIVED

☐ PRESENTENCE REPORT ORDERED ☒ NO PRESENTENCE REPORT ORDERED

☐ NINETY (90) DAY EVALUATION

☐ CONTINUED FOR SENTENCING ☒ SENTENCED

☐ CONTINUED PENDING TRIAL SETTING (Refer to Minute Entry Re Sentencing)

☐ RELEASED ON BOND $ ☐ RELEASED ON RECOGNIZANCE

☐ REMANDED TO SHERIFF PENDING BOND ☐ BAIL CONTINUED $

☐ CASE DISMISSED ☐ ARRAIGNMENT CONTINUED

NOTES Motion to withdraw previous plea. Plea of no contest entered. Affidavit of Defendant on plea bargin filed.

Minute Book No. Page No. Date: June 1, 1989

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

IN AND FOR THE COUNTY OF IRON, STATE OF UTAH

CRIMINAL *DIVISION*

CRIMINAL CIVIL NO: 1187

STATE OF UTAH			vs. CHARLES LANGDON		
Plaintiff	Appeared	X	Defendant	Appeared	X
Scott M. Burns			James L. Shumate		
Attorney	Appeared	X	Attorney	Appeared	X

JUDGE: J. PHILIP EVES REPORTER: PAUL McMULLIN

CLERK: DAVID I. YARDLEY BAILIFF: DON MURDOCK

PROCEEDING: Motion to continue

MINUTE ENTRY	MINUTE ENTRY
Defense motion to continue trial setting	
pending interlocutory appeal. Trial to	
continue on Friday June 3, 1988 as set. Matter	
passed. Recalled. Statement in mitigation	
by Defense. Defendant asked to be sentenced	
immediatly. Sentence imposed. 1-15 years	
State Prison. No fine. To be transported	
to Prison by Iron County Sheriff.	

Minute Book No. _____ Page No. _____ Date: June 1, 1988

SCOTT M. BURNS
Iron County Attorney
97 North Main, Suite #1
P.O. Box 428
Cedar City, Utah 84720
Telephone: (801) 586-6694

IN THE FIFTH JUDICIAL DISTRICT COURT, IN AND FOR IRON COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. CHARLES LANGDON, Defendant.	)	**STATEMENT OF DEFENDANT REGARDING PLEA BARGAIN, CERTIFICATES OF COUNSEL, AND ORDER** Criminal No. 1187

STATEMENT OF DEFENDANT REGARDING PLEA BARGAIN

I, Charles Langdon, the above-named Defendant, under oath, hereby acknowledge that I have entered a plea of no contest to the charge of UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DISTRIBUTE contained in the Information on file against me in the above-entitled Court, a copy of which I have received and read, and I understand the nature of the elements of the offense for which I am pleading no contest. I further understand the charge to which this plea of no contest is entered is a Second-Degree Felony, and that I am entering such a plea voluntarily and of my own free will after conferring with my attorney, James L. Shumate, and with the knowledge and understanding of the following facts:

C.L. 1. I know that I have constitutional rights under the Constitution of Utan and the United States to plead not guilty and to have a jury trial upon the charge to which I have entered a plea of no contest, or to a trial by the Court should I elect to waive a trial by jury. I know I have a right to be represented by counsel and that I am in fact represented by James L. Shumate.

C.L. 2. I know that if I wish to have a trial in Court upon the charge, I have a right to be confronted by the witnesses against me by having them testify in open court in my presence and before the Court and jury with the right to have those witnesses cross-examined by my attorney. I also know that I have the right to have witnesses subpoenaed by the State at its expense to testify in Court upon my behalf and that I could, if I elected to do so, testify in Court on my own behalf, and that if I choose not to do so, the jury can and will be told that this may not be held against me if I choose to have the jury so instructed.

C.L. 3. I know that if I were to have a trial that the State must prove each and every element of the crime charged to the satisfaction of the Court or jury beyond a reasonable doubt; that I would have no obligation to offer any evidence myself; and that any verdict rendered by a jury, whether it be that of guilty or not guilty, must be by a unanimous agreement of jurors.

C.L. 4. I know that under the Constitutions of Utah and of the United States that I have a right against self-incrimination or a right not to give evidence against myself and that this means

that I cannot be compelled to admit that I have committed any crime and cannot be compelled to testify in Court upon trial unless I choose to do so.

C.L. 5. I know that under the Constitutions of Utah that if I were tried and convicted by a jury or by the Court that I would have a right to appeal my conviction and sentence to the Supreme Court of Utah for review of the trial proceedings and that if I could not afford to pay the costs for such appeal, that those costs would be paid by the State without cost to me, and to have the assistance of counsel on such appeal.

C.L. 6. I know that if I wish to contest the charge against me, I need only plead "not guilty" and the matter will be set for trial, at which time the State of Utah will have the burden of proving each element of the charge beyond a reasonable doubt. If the trial is before a jury, the verdict must be unanimous. I know and understand that by entering a plea of no contest, I am waiving my constitutional rights as set out in the preceding paragraphs and that I am, in fact, fully incriminating myself.

C.L. 7. I know that under the laws of Utah the possible maximum sentence that can and may be imposed upon my plea of no contest to the charge identified on page one of this Statement, and as set out in the Information, are as follows:

(A) Imprisonment in the Utah State Prison of not less than one (1) year and not to exceed fifteen years;

(B) And/or fined in any amount not in excess of ten thousand dollars ($10,000.00);

I further understand that the imprisonment may be for consecutive periods if my plea is to more than one charge. I also know that if I am on probation, parole, or awaiting sentencing upon another offense of which I have been convicted or to which I have pleaded guilty, my plea in the present action may result in consecutive sentences being imposed on me. I also know that I may be ordered by the Court to make restitution to any victim or victims of my crimes.

C.L. 8. I know that the fact that I have entered a plea of no contest does not mean that the Court will not impose either a fine or sentence of imprisonment upon me and no promises have been made to me by anyone as to what the sentence will be if I plead no contest or that it will be made lighter because of my no contest plea.

C.L. 9. No threats, coercion, or unlawful influence of any kind have been made to induce me to plead no contest, and no promises, except those contained herein, have been made to me. I know that any opinions made to me, by my attorney or other persons, as to what he or they believe the Court may do with respect to sentencing are not binding on the Court.

C.L. 10. No promises of any kind have been made to induce me to plead no contest. I am also aware that any charge or sentencing concessions or recommendations for probation or suspended sentences, including a reduction of the charge for sentencing

made or sought by either defense counsel or the prosecutor are not binding on the Court and may not be approved or followed by the Court.

C.L. 11. I have read this Statement or I have had it read to me by my attorney, and I understand its provisions. I know that I am free to change or delete anything contained in this Statement. I do not wish to make any changes because all of the statements are correct.

C.L. 12. I am satisfied with the advice and assistance of my attorney.

13. I am 38 years of age, I have attended school through the 12 grade, and I can read and understand the English language. I was not under the influence of any drugs, medication or intoxicants when the decision to enter the plea was made. I am not presently under the influence of any drugs, medication or intoxicants.

C.L. 14. I believe myself to be of sound and discerning mind, mentally capable of understanding the proceedings and the consequences of my plea and free of any mental disease, defect or impairment that would prevent me from knowingly, intelligently and voluntarily entering my plea.

C.L. 15. I have discussed the contents of this Statement with my attorney and ask the Court to accept my plea of no contest to the charge set forth in this Statement because, in fact, on or about

the 17th day of March, 1988, in Iron County, State of Utah, I knowingly and intentionally possessed a controlled substance, to wit: Cocaine, with the intent to distribute.

DATED this 1 day of June, 1988.

CHARLES LANGDON
Defendant

CERTIFICATE OF DEFENSE ATTORNEY

I certify that I am the attorney for Charles Langdon, the Defendant named above, and I know he has read the Statement, or that I have read it to him; and I discussed it with him and believe he fully understands the meaning of its contents and is mentally and physically competent. To the best of my knowledge and belief after an appropriate investigation, the elements of the crime and the factual synopsis of the Defendant's criminal conduct are correctly stated, and these, along with the other representations and declarations made by the Defendant in the foregoing Statement, are accurate and true.

JAMES L. SHUMATE
Attorney for Defendant

CERTIFICATE OF PROSECUTING ATTORNEY

I certify that I am the attorney for the State of Utah in its case against Charles Langdon, Defendant. I have reviewed the Statement of the Defendant and find that the declarations, including the elements of the offense and the factual synopsis of

the Defendant's criminal conduct which constitutes the offense are true and correct. No improper inducements, threats, or coercions to encourage a plea have been offered to the Defendant. The plea negotiations are fully contained in this Statement or as supplemented on the record before the Court. There is reasonable cause to believe the evidence would support the conviction of the Defendant for the offense for which the plea is entered and acceptance of the plea would serve the public interest.

SCOTT M. BURNS
Iron County Attorney

ORDER

Based upon the facts set forth in the foregoing Statement of Defendant Regarding Plea Bargain and the foregoing Certificates of Counsel, the Court finds the Defendant's plea of no contest is freely and voluntarily made, and it is so ordered that the Defendant's plea of "no contest" to the charge set forth in the foregoing Statement be accepted and entered.

The foregoing Statement of Defendant was signed before me this 1st day of June, 1988.

J. PHILIP EVES
District Court Judge